IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 125 OF 1993

1. Maimunabai Usman
2. Mohamed Aslam Mohamed Usman
3. Mohamed Arshad Umar Kagzi
4. Human Arshad Kagzi .. Petitioners

V/s

1. Appropriate Authority
2. Union of India .. Respondents

Ms.Asifa Khan with Mr.K.B. Bhujle for the Petitioners.

Mr.R. Asokan for the Respondents.

CORAM : H.L. GOKHALE & J.P. DEVADHAR, JJ.

DATE : 9TH OCTOBER 2006

ORAL JUDGMENT : (Per H.L. Gokhale, J.)

1. Heard Ms.Khan for the Petitioners and Mr.Asokan for the Respondents.

2. Petitioners No.1 and 2 were owners of a flat bearing No.902 on the 9th floor of "C" Wing in Kanti Apartment, Mount Mary Road, Bandra (West), Mumbai-400050. They were interested in selling the said flat. They entered into an agreement on 6th October 1992 to sell the same to Respondents No.3 and 4. The flat was to be sold for Rs.19 lakhs. Thereafter as per

the requirement of Chapter XX-C of the Income Tax Act, 1961, they filed the necessary Form 37-I for approval of the said transaction on 15th October 1992.

3. Petitioners No.3 and 4 received a notice dated 15th December 1992 from the Appropriate Authority. This notice stated that they should show cause as to why an order should not be made in their case under section 269UD(1) of the Income Tax Act. They were asked to attend before the Appropriate Authority on 22nd December 1992.

4. The Petitioners accordingly attended before the Appropriate Authority and filed their written statement on 22nd December 1992. In this statement, they cited two instances of transaction in the same building. One was Flat No.104 on the first floor having an area of 915 sq.ft. built-up, which was sold for Rs.23 lakhs in June 1992 and the other one was a flat on the 10th floor in "C" Wing having an area of 615 sq.ft. which was sold in August 1992 for Rs.19 lakhs. The Petitioners appeared before the Appropriate Authority through their Chartered Accountant and the submissions of the Chartered Accountant were noted. The Appropriate Authority passed an order holding that there was an under valuation and, therefore, directed compulsory acquisition of the said flat by its order passed on 30th December 1992. The

reasons were enclosed in the annexure thereto. It is this order which is challenged in the present petition.

5. The petition came up for admission on 28th January 1993 when Rule was issued and interim order was passed in terms of prayer (c) of the petition which restrained the Respondents from taking possession of the concerned flat.

6. Today when the matter reached for final hearing, Ms.Khan for the Petitioners pointed out that although four instances are referred in the reasons given by the Appropriate Authority, they were not supplied to the Petitioners in advance to enable them to give their comments thereon. This has resulted into denial of natural justice. In any case, she submitted that out of the two instances, which were cited by the Petitioners, the second one, namely Flat No.C-3 on the 10th floor in the same building is situated just above the flat involved in the present petition. It is of the identical size and it has also been sold for Rs.19 lakhs. As far as that transaction is concerned, the Appropriate Authority consisting of the very three officers has granted a certificate under section 269UL(3) of the Income Tax Act accepting that there was no under valuation.

7. Alternatively, she submitted that even if one takes the figures which are disclosed in the order, it is seen that this flat on the 10th floor was sold at the rate of Rs.3352/- per sq.ft. The order itself records that the present flat was sold at the rate of Rs.3164/- per sq.ft. Even if these two figures are taken together, it will mean that the Petitioners' flat has undergone a transaction at a rate which is less by Rs.188/- which is hardly 5% or so when compared to Rs.3352/- which is the rate of the transaction for the 10th floor flat. Assuming without accepting that the calculations of the Appropriate Authority are correct, she submits that this was in any case not an occasion to acquire the flat since there was no under valuation to the tune of 15% involved. This yardstick of 15% is reflected in the judgment of the Supreme Court in the case of **C.B. Gautam v. Union of India - 199 ITR 530 (at page 553)**.

8. Mr.Asokan, learned counsel appearing for the Revenue, on the other hand, submitted that the Appropriate Authority was right in arriving at the decision and it has referred to and relied upon four different instances in the annexure.

9. We have noted the submissions of both the counsel. In our view, both the submissions made by the

counsel for the Petitioners are correct. Firstly, the instances, which were relied upon by the Revenue, ought to have been made available to the Petitioners to enable them to defend themselves properly. This position has been laid down in two Division Bench judgments of this Court reported in **Shreyas Builders v. M.D. Kodnani - 242 ITR 320** and **Jagdish Electronics (India) Pvt. Ltd. v. Appropriate Authority - 242 ITR 326**. Besides, the four instances which the Revenue has relied upon are from four different buildings though located in the same area. As against that, the Petitioners have drawn attention to two instances from the very building. Out of the two flats, one is on the fifth floor, but it is in "A" Wing. So we may not treat it as a comparable instance. The other flat in the "C" Wing on the 10th floor is identical to the one which is involved in the present transaction and, as stated above, even as per the calculations reflected in the order of the Appropriate Authority, there is no undervaluation to the tune of 15% involved in the present petition.

10. This being the position, we have no alternative but to quash and set aside the order which has been impugned in the present petition. Accordingly Rule is made absolute and the decision and the order dated 30th December 1992 passed by the Appropriate Authority is hereby quashed and set aside. There will be no order as

to costs.

11. When the petition was admitted on 28th January 1993, the Respondents were given liberty to deposit the amount of apparent consideration with the Prothonotary & Senior Master. Mr.Asokan states that the amount has been so deposited. The Prothonotary & Senior Master will refund that amount with accrued interest, if any, to the Respondents.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR J.)